



EB-2017-0024

Alectra Utilities Corporation

**Application for electricity distribution rates effective
January 1, 2018**

PROCEDURAL ORDER NO. 1

September 8, 2017

(Corrected and Re-Issued September 15, 2017)

Alectra Utilities Corporation (Alectra Utilities) filed an application with the Ontario Energy Board (OEB) on July 7, 2017 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) and under the OEB's Filing Requirements for Incentive Regulation Rate Applications seeking approval for changes to its electricity distribution rates to be effective January 1, 2018.

The OEB issued a Notice of Hearing (Notice) on August 18, 2017.

The following organizations applied for intervenor status and eligibility for cost awards:

- Association of Major Power Consumers in Ontario (AMPCO)
- Building Owners and Managers Association of Greater Toronto (BOMA)
- Capredoni Enterprises Ltd. (CEL)
- The City of Hamilton
- Consumers Council of Canada, (CCC)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

The Power Workers' Union¹ (PWU) applied for intervenor status but did not seek eligibility for a cost award.

On August 29, 2017, Alectra Utilities filed its response to the intervention requests. Alectra Utilities objected to CEL's intervention noting that while CEL had requested intervenor status based on being a representative/advocate for other small business owners in the Greater Niagara Chamber of Commerce and Ontario Chamber of Commerce, it had not provided any evidence that Mr. Capredoni [or CEL] had been authorized or appointed by either group (or by their members) for the purpose of intervening in this proceeding. Alectra Utilities also submitted that CEL had failed to demonstrate it held a "substantial interest" in the proceeding as is required under Rule 22.02 of the OEB's Rules of Practice and Procedure and that absent any specific issues CEL's interests were likely adequately represented by the other intervenors.

On the matter of cost award eligibility, Alectra Utilities submitted that each of AMPCO, BOMA, CCC, SEC and VECC had identified a broad range of issues they intend to pursue that are inconsistent with the OEB's decision to only consider cost awards "in relation to issues related to the incremental funding proposals for each of the Brampton, Enersource and PowerStream Rate Zones".²

The intervenor requests of each of AMPCO, City of Hamilton, BOMA, CCC, SEC and VECC are granted. Each of AMPCO, BOMA, CCC, SEC and VECC are also eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*. The OEB reiterates that cost awards will only be considered for issues related to the incremental funding proposals for each of the Brampton, Enersource and PowerStream Rate Zones.

CEL's request for intervenor status is denied. It is unclear from the notice of intervention whether CEL or Mr. Capredoni has been formally appointed to represent or advocate on behalf of the Greater Niagara Chamber of Commerce and Ontario Chamber of Commerce. Where an individual claims to represent the interests of other individuals or businesses, evidence must be provided to support this. The OEB also notes that CEL's notice of intervention does not state whether CEL is a customer of Alectra Utilities, nor does it adequately explain how CEL or any of the members that CEL claims to

¹ Late intervention, received on August 30, 2017.

² Notice of Hearing

represent has a substantial interest in the outcome of the proceeding. Further, the OEB notes that CEL did not participate in any of the earlier rebasing applications of the predecessor utilities where the underlying costs were extensively reviewed. The OEB does not therefore have any basis upon which to approve the intervention request as filed.

PWU's request for intervenor status is denied. PWU's notice of intervention provides only a broad statement of interest related to long term investments in assets, reliability, and safety of the employees it represents and does not explain how its members have a substantial interest in the outcome of the proceeding. The broad issues that PWU wishes to pursue are not the focus of the current application which is limited in scope. The OEB also notes that the PWU did not participate in any of the earlier rebasing applications of the predecessor utilities where the base-year expenditures were reviewed in detail.

The City of Hamilton's request for cost eligibility is denied. The City of Hamilton's request for cost eligibility was denied in Horizon Utilities Corporation's original Custom IR application (EB-2014-0002) on three grounds. First, that the City of Hamilton was a shareholder in Horizon Utilities Corporation. Further, that municipalities are generally excluded from eligibility for costs because they have access to a revenue stream from their own constituent taxpayers and should therefore not be funded by ratepayers and finally, that there were no special circumstances to warrant an exception. The OEB stated:

The evidence in this case is that [City of] Hamilton owns 78.9% of the common shares of Horizon Holdings Inc., which in turn is the sole owner of Horizon. Section 3.05 (i) of the Cost Direction states that a municipality in Ontario is not eligible for a cost award and Section 3.05 (l) states that a person that owns or has a controlling interest in an applicant is not eligible for a cost award. Section 3.06 of the Cost Direction provides that, notwithstanding Section 3.05, a customer of the applicant may be eligible for costs. Hamilton receives street lighting services from the applicant and is therefore a customer. Section 3.07 of the Cost Direction also permits the Board to make exceptions to classes excluded from cost awards in special circumstances. The Board has considered Hamilton's request for costs after considering all the relevant sections in the Cost Direction. While the Board acknowledges that Hamilton is a customer of the applicant, the Board is not prepared to allow Hamilton to receive costs for its participation in this proceeding.

The Board notes that municipalities have been specifically excluded from eligibility for costs because they have access to a revenue stream from their own constituent taxpayers to whom they are responsible and should therefore not be funded by ratepayers, and also because, in some circumstances, the municipalities are owners of regulated distributors who are ineligible for costs. For these reasons, the Board revised the Cost Direction in March 2012 to specifically exclude municipalities.

In the recent Hydro One Networks Inc. application, EB-2017-0049, where the City of Hamilton sought intervenor status and cost eligibility, the OEB denied cost eligibility and further elaborated on why the City of Hamilton should not be eligible for cost awards. The OEB stated:

The City of Hamilton's intervention request is made in its capacity as a street lighting customer of Hydro One. The City of Hamilton has therefore addressed section 3.03 of the Practice Direction; however, it has not provided any persuasive information as to why section 3.05(i) of the Practice Direction should not apply. While section 3.06 of the Practice Direction states "...a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant", since every municipality is a customer of the utility that serves that municipality, the OEB must ensure that the application of section 3.06 does not render section 3.05(i) ineffective.

Hydro One delivers electricity to dozens of municipalities in Ontario, each of which has access to a revenue stream from its own constituent taxpayers. The OEB considers carefully under what circumstances it should exercise its discretion to allow an exception to the general rule prohibiting cost eligibility for municipalities because the effect of doing so is to move the burden of paying eligible costs associated with an intervention from the taxpayers of the municipality in question to ratepayers of the utility that has filed an application with the OEB.

In its notice of intervention, the City of Hamilton states, "...our client [City of Hamilton] was an active participant in earlier applications of Horizon Utilities Corporation. In those applications our client has addressed, among other things, the components of the formulae by which the rates for street lighting services are established. ... [City of Hamilton] intends to pursue those issues in the Alectra application, to the extent that they bear on the Horizon Rate Zone". The issues that the City of Hamilton wishes to pursue in the current application are similar to those it pursued in Horizon Utilities Corporation's original Custom IR application and in the 2016 update that flowed from the original application. The City of Hamilton did not participate in the second annual

update (2017). The City of Hamilton was not eligible for costs in the original Custom IR application and did not request costs for its participation in the first annual update (2016). The current application represents the third annual update under the Custom IR framework approved in the original Custom IR application and the reasons that formed the basis for the denial in the original Custom IR application continue to apply in the current case. The City of Hamilton is a shareholder of Hamilton Utilities Corporation, which in turn holds shares of Alectra Utilities. The City of Hamilton is also a municipality and is therefore generally excluded from cost award eligibility. Further the issues it proposes to pursue are similar to those it has raised in previous applications for which it did not receive costs and therefore do not warrant exception. Further, the OEB has determined that cost awards in the current proceeding will be limited to issues related to the incremental funding proposals for each of the Brampton, Enersource and PowerStream Rate Zones and as such the issues that the City of Hamilton wishes to pursue are not eligible for cost awards.

The OEB has determined that the City of Hamilton may participate as an intervenor; however, the costs it incurs to do so should not be borne by Alectra Utilities' customers.

The list of parties in this proceeding is attached as Schedule A to this procedural order.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.

Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of OEB order at the end of a hearing.

Issues List

It is the OEB's expectation that parties will be best positioned to identify issues relevant to Alectra Utilities' application after the applicant has responded to interrogatories. Alectra Utilities, OEB staff and the intervenors shall develop and OEB staff shall file a proposed issues list for the OEB's consideration. The OEB will approve an issues list prior to the settlement conference.

Interrogatories

At this time, provision will be made for written interrogatories.

Parties should not engage in detailed exploration of items that do not appear to be material. Parties should use the materiality thresholds documented in Chapter 2 of the Filing Requirements as a guide. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult sections 26 and 27 of the OEB's Rules of Practice and Procedure regarding required naming and numbering conventions and other matters related to interrogatories.

The OEB is establishing procedural direction at this time up to the holding of a settlement conference. The OEB will issue further procedural direction once the outcome of the settlement conference has been determined, including whether or not any unsettled issues will be dealt with orally, or in writing.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. OEB staff shall request any information and material from Alectra Utilities that is in addition to Alectra Utilities' evidence and that is relevant to the hearing by written interrogatories filed with the OEB and delivered to Alectra Utilities and all other parties by **September 18, 2017**.
2. Intervenors shall request any information and material from Alectra Utilities that is in addition to Alectra Utilities' evidence and that is relevant to the hearing by written interrogatories filed with the OEB and delivered to Alectra Utilities and all other parties by **September 20, 2017**.
3. Alectra Utilities shall file with the OEB complete written responses to the interrogatories and deliver them to Intervenors and OEB staff by **October 11, 2017**.

4. OEB staff shall file a proposed issues list, or, alternatively, shall advise the OEB in writing that the parties and OEB staff have been unable to reach an agreement on a draft issues list by **October 18, 2017**.
5. A Settlement Conference among the parties and OEB staff will be convened on **October 25, 2017** starting at 9:30 a.m., at 2300 Yonge Street, 25th floor, Toronto. If necessary, the Settlement Conference will continue on **October 26, 2017** and **October 27, 2017**.
6. Any settlement proposal arising from the Settlement Conference shall be filed with the OEB by **November 10, 2017**. In addition to outlining the terms of any settlement, the settlement proposal should contain a list of any unsettled issues, indicating with reasons whether the parties believe those issues should be dealt with by way of oral or written hearing.
7. Any submission from OEB staff on a settlement proposal shall be filed with the OEB and served on all parties **within 7 days** from when a settlement proposal is filed.
8. If there is no settlement proposal arising from the Settlement Conference, Alectra Utilities shall file a statement to that effect with the OEB by **November 3, 2017**. In that event, parties shall file and serve on the other parties by **November 10, 2017** any submissions on which issues shall be heard in writing, and for which issues the OEB should hold an oral hearing.

All filings to the OEB must quote the file number, **EB-2017-0024** and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at martin.davies@oeb.ca and OEB Counsel, Ljuba Djurdjevic at ljuba.djurdjevic@oeb.ca.

ADDRESS

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P.O. Box 2319
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Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

**DATED at Toronto, September 8, 2017
(Corrected and Re-Issued September 15, 2017)**

ONTARIO ENERGY BOARD

By delegation, before: Kristi Sebalj

Original signed by

Kristi Sebalj
Registrar

Schedule A

To

Procedural Order No. 1

Alectra Utilities Corporation

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Applicant and List of Intervenors

September 8, 2017

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APPLICANT & LIST OF INTERVENORS

September 08, 2017

APPLICANT

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APPLICANT & LIST OF INTERVENORS

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INTERVENORS

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